

## **REMARKS/ARGUMENTS**

Applicants have reviewed and considered the non-final Office Action mailed on January 24, 2007, and the references cited therewith.

Claims 13, 16-21 have been previously withdrawn and claims 1, 2, 9-12, 14, 15 and 26 have been canceled. As a result, claims 3-8, 22-25 and 27 are now pending in this application.

The Examiner constructively elected claims 3-8, 22-25 and 27, and withdrew claims 28-30 from consideration as being directed to an invention that is independent or distinct from the invention originally claimed. While Applicants have listed claims 28-30 as being withdrawn, Applicants respectfully traverse the restriction requirement for the reasons set forth below.

### **Election/Restriction**

The Applicants respectfully traverse the restriction requirement and constructive election because claims 28-30 are not directed to an invention that is "independent and distinct" from the invention originally claimed. Although not entirely consistent with the statutory language governing such restrictions, current USPTO policy permits a restriction of claims directed to independent or distinct inventions. The MPEP describes "independent" inventions as "two or more inventions [that] are unconnected in design, operation, and effect." MPEP § 802.01. Two related inventions are "distinct" if "the inventions as claimed are not connected in at least one of design, operation, or effect." *Id.*

The office action constructively restricted the claims because claim 28 includes a means for preventing fluids from contaminating a means for collecting fluids, which the office action construes as comprising a control system. Although the specification does indicate that the control system is one structure associated with the function of preventing contamination, see Specification at 20, ll. 3-7, another structure linked to this function is a bacterial filter, see Specification at 11, ll. 24-28. Regardless of whether the control system is included in claim 28, though, the invention as claimed would not be

unconnected in design, operation, or effect. Rather, claim 28 merely defines the same essential characteristics of a single disclosed embodiment of an invention. Such a claim is merely a different "definition" of the same disclosed subject matter, varying in breadth or scope of definition. Accordingly, restriction is improper and the Applicants request that the restriction be withdrawn. See MPEP § 806.03.

Claim Rejections – 35 U.S.C. § 103

Claims 3, 4, 8, 22, 23 and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,437,651 ("Todd"), in view of U.S. Patent No. 4,631,061 ("Martin"), and further in view of U.S. Patent No. 4,460,369 ("Seymour").

Claims 5-7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Todd in view of Martin, and further in view of Seymour, as applied to claims 3, 4, 8, 22, 23 and 27 above, and further in view of U.S. Patent No. 4,886,502 ("Poirier").

Claim 8 appears to be missing a word in the limitation recited as "at least one bacterial filter interposed said canister and said pump." The word "between" should have been inserted after (or instead of) the word "interposed," and the Applicants have *sua sponte* amended claim 8 to correct this deficiency. The Examiner appears to have either anticipated this correction or unconsciously inserted this limitation into her reading of the claim. See Office Action at 4 ("Todd does not teach at least one bacterial filter interposed between said receptacle and said pump"). Thus, this amendment should require no additional search.

Although claim 8 has been amended to correct formal deficiencies, the Applicants respectfully traverse the substance of the rejection of all the claims under § 103. As corrected, independent claim 8 is allowable because none of the cited references teaches or suggests, among other things, a "bacterial filter between said canister and said pump." The office action alleges that Martin teaches a filter disposed between a canister and a pump, but this is incorrect. To the contrary, in lines 65-68 of column 3, a passage cited by the office action as supporting the rejection, Martin teaches only that a filter 50 between the pump and "outside" prevents odors from

escaping and reduces noise. Figure 1 also clearly indicates that the filter 50 is not disposed between the tank 32 and the pump 43, as the office action suggests. Rather, Figure 1 depicts the filter 50 as an extension of the pump 43. Thus, the rejection of independent claim 8 and its dependents is improper.

Moreover, the office action does not provide substantial evidence of a motivation to combine the teachings of Todd, Martin, and Seymour in a manner that would render independent claim 8 unpatentable. For example, the office action states only that it would be obvious to modify Todd because Martin "teaches that the filter in this position has the dual function of preventing urine odor from escaping said urine tank and reducing pump noise." The office action does not provide substantial evidence or particular findings, as required, to explain how preventing odor from escaping (or reducing pump noise) would motivate one of ordinary skill in the art to incorporate a filter into a wound therapy device to prevent wound fluids from contaminating the pump. Additionally, this statement of alleged motivation is factually deficient to the extent that it misconstrues Martin's teaching to prevent odor from escaping the tank rather than the pump, as described above. Accordingly, the rejection of claim 8 and its dependents under § 103 is legally and factually deficient for establishing a prima facie case of obviousness.

The Applicants request that the Examiner withdraw the rejection of claim 8 and its dependents.

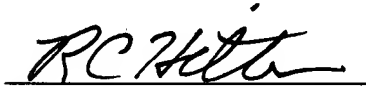
#### Conclusion

If a Petition for Extension of Time under 37 C.F.R. 1.136(a) or an additional Petition for Extension of Time under 37 C.F.R. 1.136(a) is required, the petition is herewith made and the Commissioner is authorized to charge the required fee to deposit account number 500326.

The Commissioner is authorized to charge any fees that may be required, or credit any overpayment made with this Office Action, to Deposit Account Number 500326.

In light of all the foregoing, believing that all things raised in Examiner's non-final Office Action have been addressed, Applicants respectfully request a notice of allowance and passage of the application to issue. If the Examiner would care to discuss any remaining matters by phone, Applicants invite the Examiner to contact Bill Mason at 210.255.6271.

Respectfully submitted,



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